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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,919	04/11/2002	Wilhelm Wazel	825-160	6405
	7590	04/15/2004	EXAMINER	
Gary A Essmann Andrus Sceales Starke & Sawall Suite 1100 100 East Wisconsin Avenue Milwaukee, WI 53202-4178			NGO, LIEN M	
			ART UNIT	PAPER NUMBER
			3727	
DATE MAILED: 04/15/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/031,919	Applicant(s) WAZEL ET AL	
	Examiner LIEN TM NGO	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 3-5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In claim 3, it is impossible to the lip "extends axially downwardly from a peak of the spacer" because the lip and the spacer are separate members.

Claim Objections

3. Claims 1 is objected to because of the following informalities: In claims 1, lines 7 and 8, --the-- should be added before "circumferential resilient spacer" and "cap bottom", and "closure member" should be -- the closure membrane--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3, 6 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Kitterman et al. (6,477,823).

In regard to claims 1-3, Kitterman discloses, in fig. 3, a plastic screw cap comprising a closure membrane 42; at least one circumferential spacer 34 disposed between the closure membrane and the cap bottom; a sealing lip 30; at least a region of reduced thickness defining grooves which is bilateral to a root of the sealing lip; the region of reduced thickness under the top 22 being adapted to receiving a part of the closure membrane when the pressure with a bottle increased. The sealing lip extends downwardly longer than a peak of the spacer.

In regard to claims 6 and 7, a second spacer is capable formed on the cap bottom (see fig. 2) to define a circular groove radially inside the spacer.

6. Claims 1, 2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Popp et al. (DE 4241341). Popp et al. disclose, in fig. 3, a plastic screw cap comprising a closure membrane 16 disposed between a circumferential spacer 22 and a top face of a bottle neck; the circumferential spacer 22 disposed between the closure membrane and the cap bottom; a sealing lip 19, at least a region of reduced thickness 21 defining grooves which is bilateral to a root of the sealing lip; the region of reduced thickness under the cap top being adapted to receiving a part of the closure membrane when the pressure with a bottle increased. A second spacer 32 is formed on the cap bottom.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Popp in view of Racine et al. (6,581,793).

Popp does not disclose the closure membrane having a greater thickness in a zone wherein it is contacted by the bottleneck.

Racine teaches, in fig. 5, a closure membrane having a greater thickness in a zone that it is contacted by the bottleneck.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the Popp closure membrane having a greater thickness in a zone that it is contacted by the bottle neck, as taught by Racine et al., in order to provide more sealing contact surface when the cap is in the closed position with the bottle.

2. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable Kitterman or Popp in view of Bosl et al. (6,502,710).

Kitterman or Popp does not disclose the sealing lip formed by plurality of segments.

Bosl et al. teach sealing lip formed by plurality of segments.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the Kitterman or Popp sealing lip formed by plurality of segments, as taught by Bosl et al., in order to provide more flexibility for the sealing lip.

Response to Arguments

3. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 703-305-

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0294. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LEE YOUNG can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lien Ngo

April 13, 2003

